

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

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U S WEST, INC. REPLY COMMENTS

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May 3, 1996

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SUMMARY

In its Reply Comments, U S WEST, Inc. ("U S WEST") notes that the comments filed in this proceeding are predictable, and correspond with the particular position in the industry which the commenting party occupies. Nevertheless, it bears repeating that a market definition does not vary, and cannot reasonably vary, based solely on the historical classification of the party the Federal Communications Commission wishes to evaluate. Once a market is properly defined, the presence of market power must be assessed in relation to that market, not to another market. Moreover, examination of the presence of market power alone is not a useful exercise. The relevant inquiry focuses on conduct that constitutes abuse of market power. U S WEST additionally responds briefly to an objection -- wholly irrelevant to this proceeding -- to its plans to exit the intrastate Centrex market.

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U S WEST, INC. REPLY COMMENTS

**I. PROPER APPLICATION OF ANTITRUST PRINCIPLES
SHOULD GUIDE ASSESSMENT OF MARKET POWER
IN THE INTEREXCHANGE MARKET**

As U S WEST, Inc. (or "U S WEST") noted in its initial comments in this proceeding,¹ antitrust principles are appropriate in the Federal Communications Commission's ("Commission") consideration of how to define and regulate so-called "dominant carriers." However, even though there is substantial consensus that antitrust analysis should guide market power definition in the context of this proceeding, many commenters do not rely on correct antitrust principles to support their positions.²

¹ In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice of Proposed Rulemaking, FCC 96-123, rel. Mar. 25, 1996.

² Commenters referenced herein include: Scherers Communications Group, Inc. ("Scherers"), filed Apr. 17, 1996; Frontier Corporation ("Frontier"), filed Apr. 18,

It is axiomatic that the definition of a relevant market cannot be one thing for one group of participants and another thing for another group. Furthermore, the Commission cannot apply a different test of market power to one group of market participants versus that applied to another.³ Rather, the Commission must focus on the state of competition and the existence of market power within the relevant market -- in this proceeding, the interexchange services market.

None of the commenters demonstrate that a Bell Operating Company ("BOC") (actually any local exchange carrier ("LEC")) has market power in the interexchange services market. Instead, they presume that a BOC's position in the local exchange market will, as a matter of course, negatively impact, if not completely obstruct, competition upon its entry into the interexchange market. Therefore, these commenters conclude, BOCs possess market power in the interexchange market.⁴ Where most commenters fail in their analysis is in the way a BOC's position in the local exchange market should actually be viewed. AT&T, as well as others, seems to believe that the presence of market power in one market alone is sufficient to classify that entity as dominant in other markets.⁵

1996; AT&T Corp. ("AT&T"), filed Apr. 19, 1996; Bell Atlantic Telephone Companies and Bell Atlantic Communications, Inc. ("Bell Atlantic"), filed Apr. 19, 1996; The Competitive Telecommunications Association ("CompTel"), filed Apr. 19, 1996; General Services Administration ("GSA"), filed Apr. 19, 1996; U S WEST, Inc., filed Apr. 19, 1996; Vanguard Cellular Systems, Inc. ("Vanguard"), filed Apr. 19, 1996.

³ See Bell Atlantic at 6.

⁴ See, e.g., AT&T at 10-11; Vanguard at 9-11.

⁵ See, e.g., AT&T at 24-27; GSA at 2; and CompTel at 4.

U S WEST's Comments demonstrate the fallacy of that approach under both antitrust principles and principles of the Communications Act of 1934, as amended. U S WEST cannot be deemed dominant in a market where it does not have market power -- even if it were to be found to possess market power in the local exchange markets.

Still others seem to believe that any perceived advantage in a market held by a BOC (e.g., LEC access to customers, LEC economies of scope and scale, the existence of substantial LEC investment in the form of assets, and the offering of multiple products) should be eliminated or reduced via regulatory fiat.⁶ Such an analysis would turn economics on its head. The only competitive advantages which the Commission should even contemplate regulating out of existence are those derived directly from the possession of market power. Access to customers, economies of scale and scope, and other similar business advantages are shared lawfully by multiple businesses and should not be regulated -- especially in markets where LEC market power does not exist.

Once a market is properly defined, the relevant inquiry is whether a participant has and exercises market power in that market, such that the proper functioning of the market will be skewed by anticompetitive conduct. It is not seriously contested that 1) the market for interexchange services is competitive; 2) the structure of the market is such that new entrants will have a challenge competing with the incumbent interexchange carriers because of the interexchange

⁶ See, e.g., Scherers at 3; GSA at 3; CompTel at 4.

carriers' size, excess capacity, and low barriers to entry; and 3) a BOC entering the market with zero market share does not have and cannot exercise market power in that market. Moreover, a BOC has no ability to use putative market power in the local exchange market to affect competition in the interexchange market, and proposals to designate a BOC as "dominant" or impose separate affiliate burdens on a BOC based simply on imagined horrors are preposterous. If regulation of a LEC's local exchange operations is deemed appropriate based on analysis of the local exchange market, such regulation would stand on its own merits and should not spill over into markets where market power is not exercised.

II. U S WEST'S DISCONTINUANCE OF CENTREX SERVICES IS NOT ANTICOMPETITIVE

One carrier, Frontier, suggests that U S WEST is being anticompetitive because it has requested authority to discontinue its Centrex product lines and to grandfather certain Centrex offerings to permit a reasonable transition time for existing customers.⁷ Fundamentally, Centrex has been developed and deployed as an end-user service which provides customers with a central-office-based service competitive with private branch exchange. It was never designed as a carrier service, although some states have recently permitted resale carriers to purchase and resell Centrex.⁸ Given its end-user basis, Centrex has not been included in the

⁷ Frontier at 6.

⁸ See, e.g., Iowa Utilities Board Order Granting Application for Certificate of Public Convenience and Necessity, Granting Waivers of Directory and Accounting Requirements, and Denying Waiver of Map Requirement, Docket No. TCU-93-3, issued Dec. 22, 1993.

U S WEST Open Network Architecture plan, putting U S WEST at a significant disadvantage over others in marketing enhanced services to Centrex end-user customers.⁹

In any event, Centrex resale creates significant pricing anomalies which cannot be sustained in the competitive market envisioned under the Telecommunications Act of 1996.¹⁰ As Frontier well knows, these pricing anomalies could be harmful to competition, to the public interest, and to U S WEST on a going-forward basis. Moreover, the Centrex features which Frontier proclaims to desire are available in U S WEST's general tariffs. What Frontier wants to buy are the pricing anomalies, not the Centrex service or features. U S WEST's phased withdrawal of the Centrex end-user services is an important and pro-competitive business decision by U S WEST.

Assuming, arguendo, that Frontier's position is true, Frontier's allegations about Centrex have no place in this proceeding. Even taken to the extreme, beyond what even Frontier would complain, Frontier's position still demonstrates no reason to regulate U S WEST in markets where it has no market power. This issue might

⁹ In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd. 1 (1988).

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 ACT").

be raised properly in CC Docket No. 96-98 (dealing with local exchange regulation).¹¹ It should be ignored in this proceeding.

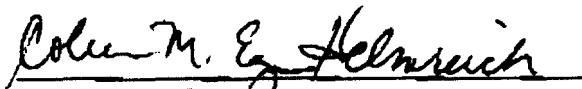
III. CONCLUSION

Under the 1996 Act, the Commission is, inter alia, obligated to advance Congress' competition objectives in the interexchange services market. Imposing regulatory constraints upon BOCs on the basis of imagined market power in that market will serve only to thwart those goals. U S WEST urges the Commission not to do so.

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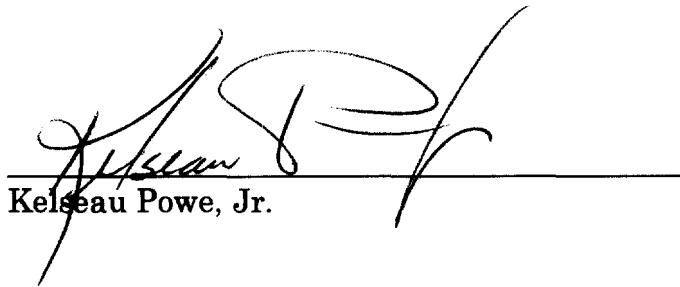
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May 3, 1996

¹¹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, rel. Apr. 19, 1996.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 3rd day of May, 1996, I have caused a copy of the foregoing **U S WEST, INC. REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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